

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

2 EUMI L. CHOI (WVSBN 0722)
3 Chief, Criminal Division

4 DENEEN A. DILUIGI (COSBN 35082)
Special Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102
7 Telephone: (415) 436-7031
8 Fax: (415) 436-7234
Email: Dennee.DiLuigi@usdoj.gov

Attorneys for Plaintiff

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) No. CR 05-00052 MAG
14 Plaintiff,)
15 v.) PLEA AGREEMENT
16 TYLER BOWER,)
17 Defendant.)
18

19 I, Tyler Bower, and the United States Attorney's Office for the Northern District of California
20 (hereafter "the government") enter into this written plea agreement (the "Agreement") pursuant
21 to Rule 11(c)(1)(A) and Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to the captioned information charging me with illegal taking of a
24 marine mammal, in violation of Title 16, United States Code, Section 1372(a)(2)(A) and
25 1375(b). I agree that the elements of the offense and the maximum penalties are as follows: (1)
26 the defendant did knowingly and intentionally take, by harassing and hunting; (2) a protected
27 marine mammal, to wit: a California Sea Lion, *Zalophus californianus*; (3) within the Northern
28 District of California in waters under the jurisdiction of the United States.

- a. Maximum prison sentence 1 year
- b. Maximum fine \$20,000
- c. Maximum supervised release term 1 year
- d. Mandatory special assessment \$25

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

On December 9, 2004, I hunted and harassed a California Sea lion by shooting the sea lion with a high-powered compound bow at a distance of approximately twenty yards while it sat on a dock at the marina behind the Chart House Restaurant in the Crescent City harbor located in the Northern District of California.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government and to future DNA testing of physical evidence in the government's possession; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my conviction(s), the judgment, and orders of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence, including any orders relating to forfeiture and/or restitution.

5. I understand that under 18 U.S.C. § 3600, I have the right, under certain circumstances, to post-conviction DNA testing of evidence in the government's possession in support of a claim that I am actually innocent of the offense(s) to which I am pleading guilty under this plea agreement. I agree to waive my right to post-conviction DNA testing and my right to file a petition under 18 U.S.C. § 3600 to compel that testing.

6. I agree not to file any collateral attack on my conviction(s) or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

7. I agree not to ask the Court to withdraw my guilty plea(s) at any time after it is

1 (they are) entered.

2 8. I agree that the Court will calculate my sentencing range under the Sentencing
3 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
4 those Guidelines and take them into account when sentencing. I agree that regardless of the
5 sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my
6 guilty pleas. I also agree that the Sentencing Guidelines range will be calculated as follows and
7 that I will not ask for any other adjustment to or reduction in the offense level or for a downward
8 departure from the Guidelines range:

9 a.	Base Offense Level, U.S.S.G. § 2Q2.1(a):	6
10 b.	Acceptance of responsibility: (If I meet the requirements of USSG §3E1.1):	<u>-2</u>
11 c.	Adjusted offense level:	4

12
13 I agree that a sentence within the applicable Guideline range is reasonable and that I will not seek
14 a sentence below the applicable Guideline range.

15 I agree that, regardless of any other provision in this agreement, the government may and will
16 provide to the Court and the Probation Office all information relevant to the charged offenses or
17 the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines
18 calculations above, the Court may conclude that a higher guideline range applies to me, and, if it
19 does, I will not be entitled, nor will I ask, to withdraw my guilty plea(s).

20 9. I agree that the court may order and I will pay restitution. I agree that I will
21 make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or
22 after sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,
23 provide accurate and complete financial information, submit sworn statements and give
24 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as
25 a result of my crimes, and release funds and property under my control in order to pay any fine,
26 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

27 10. I agree not to commit or attempt to commit any crimes before sentence is
28 imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my

1 pretrial release (if any); intentionally provide false information to the Court, the Probation Office,
2 Pretrial Services, or the government; or fail to comply with any of the other promises I have
3 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this
4 Agreement, then the government will be released from all of its promises in this agreement,
5 including those set forth in paragraphs 13 through 16 below, but I will not be released from my
6 guilty plea(s).

7 11. I agree that this Agreement contains all of the promises and agreements
8 between the government and me, and I will not claim otherwise in the future.

9 12. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
10 District of California only, and does not bind any other federal, state, or local agency.

11 The Government's Promises

12 13. The government agrees to move to dismiss any open charges pending against
13 the defendant in the captioned indictment at the time of sentencing.

14 14. The government agrees not to file or seek any additional charges against the
15 defendant that could be filed as a result of the investigation that led to the captioned indictment.

16 15. The government agrees to recommend the Guidelines calculations set out
17 above as well as the sentence set forth in paragraph 16, below, so long as the defendant does not
18 have a criminal history category greater than I.

19 Joint Sentencing Recommendation

20 16. The parties agree to jointly recommend the following sentence, so long as the
21 defendant does not have a criminal history category greater than I:

- 22 a. 3 years of probation;
- 23 b. Payment of a \$1,500 fine;
- 24 c. 143 hours of community service related to environmental causes at the
25 direction of U.S. Probation;
- 26 d. A written apology regarding the shooting of the sea lion to be published in
27 the local newspaper;
- 28 e. As a special condition of his probation, the defendant shall not possess or
purchase any weapons that are related to hunting and fishing;

1 f. As a special condition of his probation, the defendant shall not engage in
2 hunting and fishing; and

3 g. Payment of the special assessment fee of \$25, payable to the Clerk of the
4 Court on the day of sentencing. _____

5 The Defendant's Affirmations

6 17. I confirm that I have had adequate time to discuss this case, the evidence, and
7 this Agreement with my attorney, and that he has provided me with all the legal advice that I
8 requested.

9 18. I confirm that while I considered signing this Agreement, and at the time I
10 signed it, I was not under the influence of any alcohol, drug, or medicine.

11 19. I confirm that my decision to enter a guilty plea is made knowing the charges
12 that have been brought against me, any possible defenses, and the benefits and possible
13 detriments of proceeding to trial. I also confirm that my decision to plead guilty is made
14 voluntarily, and no one coerced or threatened me to enter into this agreement.

15 20. I confirm that I do not have a criminal history greater than I.

16 Dated: _____

17 _____
TYLER BOWER
Defendant

18 _____
KEVIN V. RYAN
United States Attorney

19 Dated: _____

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DENE A. DILUIGI
Special Assistant United States Attorney

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1 I have fully explained to my client all the rights that a criminal defendant has and all the
2 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
3 and all the rights he is giving up by pleading guilty, and, based on the information now known to
4 me, his decision to plead guilty is knowing and voluntary.

5
6 Dated: _____

STEVEN WATSON
Counsel for Mr. Bower